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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

BARAUSKAS ET AL.

Atty. Ref.: 613-109; Confirmation No. 1581

Appl. No. 10/586,778

TC/A.U. 1618

Filed: March 23, 2007

Examiner: Ahmed

For: NON-LAMELLAR COMPOSITIONS OF DOPE AND P80

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June 24, 2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CORRECTED RESPONSE

An unfortunate typing error occurred in the last line of page 1 of the June 6, 2008 Response: "particulars" should be --particles-- as will be apparent from the description of the invention. It is corrected below:

Responsive to the Official Action dated February 12, 2008 (for which petition is hereby made for a three month extension of time) and the requirement for restriction presented in it, applicant elects the subject matter of claim 1, Group I, directed to a particulate composition. This response is made with traverse – there is a clear common inventive concept between the examiner's Groups. The examiner states:

The inventions listed as Groups I-XIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reason: the common technical feature in all groups is a particulate composition comprising DOPE and Polysorbate 80 (Tween ® 80). Liu (WO 97/11682) teaches a particulate composition comprising DOPE and Polysorbate 80 (Tween ® 80) (see page 14, lines 21 and 34).

Although the examiner's characterization of Liu is correct, he omits from consideration the most important technical feature of the compositions of the invention – that they all form non-lamellar particles upon exposure to aqueous fluids.

This is an explicit and precise technical limitation of the claims and is not only clearly distinct from the simple emulsions of Liu, but also cannot be predicted from knowledge of existing emulsion compositions. As a result, all claims are technically distinct from the prior art and its teachings in a way that is common to every claim. This is the very definition of a common special technical feature according to PCT Article 13.2 and thus the groups of inventions pointed out by the examiner are clearly unified.

Please examine the elected claim and all of the claims on the merits taking into account the documents cited in the International Search Report in the underlying PCT application as presented in the Information Disclosure Statement filed herewith.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



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